

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Establishing Emergency Connectivity Fund)	WC Docket No. 21-93
To Close the Homework Gap)	

COMMENTS OF INCOMPAS

Angie Kronenberg
Lindsay Stern
Christopher L. Shipley
INCOMPAS
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5745

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INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Wireline Competition Bureau’s *Public Notice*,¹ which seeks comments on the Emergency Connectivity Fund for educational connections and devices to address the Homework Gap and promote remote learning during the COVID-19 pandemic.

I. INTRODUCTION AND SUMMARY

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers that provide residential BIAS, as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber providers; transit and backbone providers that carry broadband and Internet traffic; online video distributors (“OVDs”) which offer video programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

¹ Federal Communications Commission, *Public Notice*, WC Docket No. 21-93 (rel. Mar. 16, 2021) (“*Public Notice*”).

INCOMPAS members have been working diligently throughout COVID-19 to meet their customers' needs, and this is especially true regarding service for the community anchor institutions they serve. To help schools and libraries provide devices and connectivity to students, school staff, and library patrons during the pandemic, Congress established a \$7.171 billion Emergency Connectivity Fund ("the Fund") as part of the American Rescue Plan Act of 2021 and tasked the Federal Communications Commission ("FCC" or "Commission") to promulgate rules in setting up the Fund.² Many of INCOMPAS' members currently provide service through the E-rate program, and INCOMPAS believes the Fund will make a significant difference in addressing the current need for students, school staff, and library patrons who have not been able to obtain broadband internet access service during COVID. INCOMPAS and its members support the American Rescue Plan's effort to address the connectivity needs through the Emergency Connectivity Fund and the Critical Capital Projects Fund, in addition to the efforts of the CARES Act and the Emergency Broadband Benefit program, which collectively will help those who currently are not connected to broadband.

The COVID-19 crisis has further exposed the digital divide across the country and has shed a light on the importance of robust connectivity, especially for those engaging in remote learning. Our dependence on broadband services has only been amplified over the past year, and it is more evident now than ever before that reliable, robust, and affordable high-speed

² The FCC currently has a separate overlapping proceeding regarding changes to the E-rate program to promote remote learning. INCOMPAS filed comments in that proceeding to show support for agency action to allow the use of E-rate funds to enable remote learning and advocates for similar principles in this proceeding. *See* Reply Comments of INCOMPAS, *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow the Use of E-rate Funds To Support Remote Learning During the COVID-19 Pandemic*, WC Docket No. 21-31 (Feb. 23, 2021) ("INCOMPAS Reply Comments"); *see also* *Public Notice*, at n.4.

broadband connectivity is a necessity in American homes as social distancing guidelines and stay-at-home orders have required more Americans to connect with their communities, vital services, jobs, schools, and commerce through online resources and services. As the Commission is acutely aware, students who must school from home due to stay at home orders and/or quarantine requirements need broadband connectivity to continue their education. Unfortunately, many students remain disconnected and are at risk, especially those in low-income and minority communities. As explained by Acting Chairwoman Rosenworcel, “[t]he nation’s Homework Gap has never been more evident than during this pandemic with the move to remote learning” and that “[r]ecent estimates suggest the Homework Gap may affect as many as 17 million kids with recent data suggesting as many as one in three Black, Latinx, and American Indian/Alaska Native students lack high-speed internet access at home. The Emergency Connectivity Fund could make a major difference in our ability to help these families and students.”³ According to Microsoft, approximately 65% of students are currently distance learning using online resources, and over 19 million are in households that are not using the internet at broadband speeds (defined as 25/3 Mbps)—and while broadband usage and availability are not the same, they are highly correlated.⁴ In addition, recent research published by WGBH Educational Foundation and PBS indicates increased reliance on remote learning and the lack of access for students to devices and services.⁵ According to the findings, in June 2020 nearly 1 in 7 teachers surveyed (13%) reported

³ FCC Statement, *Acting Chairwoman Rosenworcel Welcomes Passage of Legislation That Would Create \$7.1 Billion Emergency Connectivity Fund for Remote Learning* (Mar. 10, 2021).

⁴ Microsoft Ex Parte Letter, *Addressing the Homework Gap through the E-rate Program*, WC Docket No. 21-31 (Mar. 16, 2021).

⁵ GBH Education and PBS LearningMedia, *Teacher K-21 Digital Media Use Before & After the COVID-19 Transition to Remote Learning* (Jan. 22, 2021), available at

that they started using K-12 digital media services only after the COVID-19-related school closures.⁶ The research found that the COVID-19 shift to remote learning exacerbated inequities in digital media access—most teachers surveyed in June 2020 reported that a majority of their students complete schoolwork on some sort of computing device, yet, many of those students rely on school or district-issued devices or hot spots.⁷ Nearly half of teachers reported that a majority of students complete schoolwork on a school or district-issued device (48%) and 15% reported that a majority of students have high-speed Internet/Wi-Fi access through a school or district-issued hot spot. Still, many students are not equipped with the proper tools to participate in remote learning—5% of teachers reported that a majority of their students do not have access to a device to complete schoolwork and 10% of teachers reported that a majority of their students do not have access to high-speed internet at home, and this lack of access disproportionately affects vulnerable populations.⁸ As the research explains, remote learning has exacerbated already existing opportunity gaps, and students in underserved populations must be provided with adequate device and internet access to allow for equitable access to learning opportunities.⁹

By establishing the Fund, it is clear that Congress understands the importance of connecting more students, teachers, school staff, and library patrons for educational purposes. As the FCC promulgates rules for the distribution of funding, INCOMPAS urges the Commission to

<https://wgbh.brightspotcdn.com/24/63/6bb68be74fb482dfb01a5de637ff/exec-summary-for-infographic-updated.pdf>.

⁶ *Id.* at 3.

⁷ *Id.* at 5.

⁸ *Id.*

⁹ *Id.* at 9.

take the following into consideration: (1) streamline and simplify the application process for eligible schools and libraries for funding for eligible equipment and services; (2) encourage a competitively neutral approach so that eligible schools and libraries can access the devices and services that best meet their needs; and (3) allow for the reimbursement of service and equipment provided as of January 27, 2020.

II. THE FUND WILL BE MOST EFFECTIVE IF THE COMMISSION TAKES A COMPETITIVELY NEUTRAL APPROACH, REIMBURSES PURCHASES MADE FROM THE START OF THE EMERGENCY PERIOD, AND DOES NOT REQUIRE A NEW COMPETITIVE BIDDING PROCESS.

The Commission seeks comment on various issues related to the Fund throughout the *Public Notice*. Throughout these comments, INCOMPAS would like to provide its insight and suggestions regarding eligible equipment and services, reimbursement, and the competitive bidding process.

(a) The Commission Should Take A Competitively Neutral Approach Regarding Eligible Equipment and Services.

The American Rescue Plan Act requires that support provided to eligible schools and libraries be used during the COVID-19 emergency period for the purchase of (i) eligible equipment and/or (ii) advanced telecommunications and information services as the term is used in section 254(h) of the Communications Act.¹⁰ The Act defines “eligible equipment” as (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices.¹¹ Connected devices are defined as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and

¹⁰ See H.R. 1319, tit. VII, § 7402(a)(1)-(2), (d)(1); see also *Public Notice*, at 5.

¹¹ See H.R. 1319, tit. VII, § 7402(d)(6); see also *Public Notice*, at 5.

information services.¹² The Act defines the COVID-19 emergency period as beginning on January 27, 2020 and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.¹³ The Commission proposes that services be limited to those that can be supported and delivered with eligible equipment and seeks comment on excluding the construction of new networks from the funding.¹⁴

INCOMPAS urges the Commission to establish a competitively neutral approach and to take an expansive view of the equipment and services that should be considered as eligible equipment and services during this temporary Fund. In the separate proceeding on addressing the Homework Gap through the use of E-rate funding for remote learning, the Commission has developed a robust list of connectivity solutions that providers of devices and services to schools and libraries are using to address remote learning during the current pandemic.¹⁵ Establishing a set of neutral rules for eligible devices and service will allow school districts to choose the services and devices that best suit their needs as well as the needs of their students and patrons. Ultimately, the Commission should aim to ensure that school districts and consortia have as wide a range of options as possible to address the Homework Gap, including the current daily remote learning gap, in their communities. The Commission should permit the community anchor institution to choose the technology that best works for delivery of service to its constituents in

¹² See H.R. 1319, tit. VII, § 7402(d)(3); see also *Public Notice*, at 5.

¹³ See H.R. 1319, tit. VII, § 7402(d)(5)(B); see also *Public Notice*, at 2.

¹⁴ See *Public Notice*, at 7.

¹⁵ See INCOMPAS Reply Comments, at 4-5.

order to increase the flexibility that schools and libraries urgently need to continue facilitating remote learning from home. INCOMPAS agrees with SHLB and OTI who explained to the Commission that “[f]acilitating remote learning and closing the homework gap should be the paramount concern,”¹⁶ and that the Commission’s rules for appropriated funding “should be technology neutral and include any advanced telecommunications technology or service that best meets the local needs of students for internet connections to learn away from school.”¹⁷ Their ex parte letter shows the many innovative solutions to the Homework Gap and the unfortunate realities that in many communities, “cellular hotspots are not always a feasible solution to the digital divide in many parts of the country, particularly in rural, Tribal, and other hard-to-serve regions, or even in certain areas within exurban districts that have neither cable service nor mobile signal strength to support video streaming indoors.”¹⁸ For example, Congressman Latta, the Ranking Member of the House Energy and Commerce Subcommittee on Communications and Technology, has been hearing from constituents in his district who “due to the lack of quality, high speed broadband, rely on hotspots and other quick fix approaches that do not adequately support their virtual work and learning.”¹⁹ Furthermore, Microsoft’s ex parte letter notes the company’s ability to increase broadband availability and adoption through its Airband

¹⁶ SHLB Coalition and Open Technology Institute Ex Parte Letter, WC Docket Nos. 21-31, 21-93, 17-310 (Mar. 17, 2021) (“SHLB and OTI Ex Parte Letter”), at 2.

¹⁷ SHLB and OTI Ex Parte Letter, at 5.

¹⁸ *Id.*

¹⁹ Representatives Cathy McMorris Rodgers and Bob Latta, *Boosting Broadband Connectivity for All Americans*, The Ripon Forum (March 2021); *available at* <https://riponsociety.org/article/boosting-broadband-connectivity-for-all-americans/>.

Initiative.²⁰ This program allows Microsoft to meet the needs in rural and urban areas with its broadband partners through the use of fixed wireless technology, and because “[t]here is no one-size-fits-all technological solution to closing the broadband gap,”²¹ such technology should be permitted for potential reimbursement in the Fund. As such, INCOMPAS agrees that the Commission “should err on the side of being technology neutral” and “trust local school and library officials to determine what combination of technologies and services best meets the learning needs of their students and teachers.”²² Accordingly, the Commission’s current list in the *Public Notice* should be expanded to permit a technology-neutral category of service and equipment that is used to connect users to the school or library’s network. INCOMPAS encourages the Commission to adopt equipment and service neutrality in order to permit schools and libraries the flexibility to choose what best meets their students’, staff, and patrons’ needs and for providers to offer alternatives that will best meet their needs. Devices should allow end users to fully participate in all the opportunities that modern day digital education offers.

In addition, the Commission should interpret “advanced telecommunications and information services” to include any services that support advanced internet connectivity, including cloud computing services. The Commission can rely on section 254(h)(2) of the Communications Act as this interpretation would be consistent with its mandate, which requires it to adopt competitively neutral rules to enhance access to broadband for schools and libraries,

²⁰ Microsoft Ex Parte Letter, WC Docket No 21-31 (Mar. 16, 2021).

²¹ Charlotte Edmond, *Airband: the initiative to bring the internet to everyone*, Microsoft Blog (Sept. 1, 2020), available at <https://news.microsoft.com/on-the-issues/2020/09/01/airband-initiative-rural-broadband-digital-divide/>.

²² SHLB and OTI Ex Parte Letter, at 3.

but does not require the Commission to prescribe specific equipment and services. The Commission should ensure that schools, libraries, and consortia continue to receive the E-rate supported services that best meet their needs for connectivity, which will often involve cloud computing solutions, especially for those rural and less privileged students.

Cloud services that support broadband internet are becoming increasingly important to remote and online learning. Thousands of educational institutions across the U.S. are using cloud services to lower IT costs, enhance remote learning platforms, perform analytics for educational initiatives, manage student and school staff data, and even prepare students for STEM careers. Given the urgency and importance of online learning during and even after the pandemic, the manner in which remote or hybrid teaching methods are conducted will undoubtedly impact the future of education, and the Commission should consider including cloud computing services to be eligible for the Fund.

The Commission also seeks comment on excluding the construction of new networks from the Fund.²³ INCOMPAS believes that new network builds should be supported by the Fund, but should be limited only to current provider upgrades in order to ensure that capacity to the school or library can support connectivity to the homes. The use of this funding for new construction would likely be limited and could also be approved on a case-by-case basis rather than excluding it as an option entirely. The Commission should only allow such funding in situations where supported schools and libraries have found that their current connections are inadequate to serve homes during the pandemic. INCOMPAS also encourages neutrality in order for the Commission to promote as much competition as possible. Competition amongst providers has driven down costs in the E-rate program, and it is likely to drive down the cost of devices

²³ See *Public Notice*, at 7.

and service for eligible schools and libraries using the Fund as well. In addition, INCOMPAS recommends that the broadband services and equipment funded meet at least the current speed benchmark of 25/3 Mbps to ensure that a student, teacher, or library patron’s basic broadband needs can be met through the program.

(b) The Commission Should Allow Reimbursements of Eligible Equipment and Services Purchased At The Beginning Of The Emergency Period.

According to the American Rescue Plan Act, the Commission must reimburse 100% of the costs of the eligible equipment and services, but the costs may not exceed an amount that the Commission determines as reasonable.²⁴ As a result, the Commission seeks comment on whether it should reimburse purchases of eligible equipment and services made by schools and libraries since January 27, 2020, and how it should determine what is considered a “reasonable cost” to reimburse.²⁵ INCOMPAS supports reimbursement for eligible equipment and services that have already been purchased and provided to E-rate eligible schools and libraries as of January 27, 2020, which is defined as the beginning of the COVID-19 emergency period (to the extent that they have not been funded through another federal funding mechanism of COVID-19 relief support). Many providers offered service and equipment in the last year and reimbursement will assist with the budget constraints faced by schools and libraries and potentially reimburse providers who steeply discounted and/or provided equipment and service for free.

In addition, in order for the Fund to be administered efficiently, INCOMPAS suggests that the Commission import the amount from the Emergency Benefit Broadband Program (“EBB”) as a limiting principle and define the price of services and equipment as reasonable in

²⁴ See H.R. 1319, tit. VII, § 7402(b); see also *Public Notice*, at 10.

²⁵ See *Public Notice*, at 10.

the Fund if they meet the requirements of the EBB. Thus, service to homes up to \$50 on non-tribal lands, \$75 on tribal lands, and at least \$150 per connected device would be considered reasonable under the Fund.²⁶ The Commission should also consider a reimbursement above \$150 per connected device, as that would allow for the acquisition of a greater variety of devices.

(c) INCOMPAS Agrees With The Commission That A New Competitive Bidding Process Is Not Necessary In This Emergency Context.

According to the *Public Notice*, the Commission proposes that schools and libraries that have already entered contracts for remote learning should be reimbursed without having to go through a competitive bidding process.²⁷ It also seeks comments on whether it should adopt a streamlined competitive bidding process for eligible schools and libraries that have not yet purchased or entered into contracts.²⁸ INCOMPAS generally supports a competitive bidding process in the E-rate and other USF programs because competition drives down costs, increases speeds, leads to better customer service, and protects the program from waste, fraud, and abuse.

However, INCOMPAS agrees with the Commission that a new competitive bidding process should not be required in this emergency context where a school or library is already in the E-rate program and has an E-rate service provider. In such situations, providers have already gone through competitive bidding for the overall contract. The Commission's proposal to limit the Fund to current contracting providers will offer efficiencies that will inure to the benefit of USF ratepayers and U.S. taxpayers. For instance, those contracts may also already reflect some

²⁶ Pursuant to the Consolidated Appropriations Act, the EBB will reimburse participating providers up to \$100 for a connected device if the charge to the household for that device is more than \$10 but less than \$50, therefore bringing the total amount of reimbursement up to \$150 per connected device. *See* Federal Communications Commission, *Public Notice*, WC Docket No. 20-445 (rel. Jan. 4, 2021), at 1-2.

²⁷ *See Public Notice*, at 10.

²⁸ *See Public Notice*, at 11.

needs due to COVID. In addition, the equipment and services supported by this new funding will be limited by the reasonableness requirement as discussed above. However, to the extent a school or library does not have an E-rate supported contract, INCOMPAS encourages the Commission to adopt a streamlined competitive bidding process that will ensure competitive rates for equipment and services in the Fund.

III. CONCLUSION

INCOMPAS and its members applaud the establishment of the Emergency Connectivity Fund in order to promote remote learning, especially during the COVID-19 pandemic, and urges the Commission to consider these comments in order to implement it effectively and efficiently.

Respectfully submitted,

/s/ Angie Kronenberg

Angie Kronenberg
Lindsay Stern
Christopher L. Shipley
INCOMPAS
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5745

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